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23 **UNITED STATES DISTRICT COURT**
24 **FOR THE DISTRICT OF NEVADA**
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1 JAMES V. DEPPOLETO JR.,
2 Individually and Derivatively on Behalf of
3 Nominal Defendant Takeover Industries
4 Incorporated

5 Plaintiff,

6 v.

7 TAKEOVER INDUSTRIES
8 INCORPORATED,
9 Defendant and Nominal Defendant

10 MICHAEL HOLLEY,

11 TOBY MCBRIDE,

12 JOSEPH PAVLIK,

13 TOM ZARRO,

14 and

15 NEXTGEN BEVERAGES, LLC

16 Defendants.

CASE NO. 2:22-cv-02013-GMN-MDC

**PLAINTIFF’S REPLY BRIEF IN SUPPORT
OF HIS SUPPLEMENTAL REQUEST FOR
ATTORNEYS’ FEES RELATED TO
PLAINTIFF’S MOTION TO COMPEL**

17 Plaintiff, James V. Deppoleto Jr. (“Plaintiff” or “Deppoleto”), by and through his
18 undersigned counsel, submits this reply brief in support of his supplemental request for attorneys’
19 fees that he incurred to obtain an Order from the Court that compelled Takeover Industries
20 Incorporated (“Takeover”), Michael Holley (“Holley”), Toby McBride (“McBride”), Joseph Pavlik
21 (“Pavlik”), Tom Zarro (“Zarro”), and NextGen Beverages, LLC’s (“NextGen”) (collectively, the
22 “Takeover Defendants”) to: (1) provide complete responses to Deppoleto’s First, Second, and Third
23 Set of Requests for Production; and (2) for Zarro to complete his deposition. (*See* Dkt. No. 118,
24 129.)

25
26 The Takeover Defendants do not dispute that they produced thousands of pages of
27 responsive material only after Plaintiff filed his original and renewed motion to compel –
28 circumstances that mandate an award of attorneys’ fees to Plaintiff under Fed. R. Civ. P.

1 37(a)(5)(A). Instead, the Takeover Defendants now argue – for the first time – that Plaintiff’s
2 request should be denied simply because a specific dollar amount of fees was not included in
3 Plaintiff’s original submission.

4 Up until the Motion to Compel Hearing on May 15, 2025, which was the Takeover
5 Defendants’ deadline to object, the Takeover Defendants had never challenged Plaintiff’s
6 entitlement to fees pursuant to Fed. R. Civ. P. 37(a)(5)(A). (*See* May 15, 2025, Hr’g Tr. 71:24-72:2,
7 Dkt. No. 131 (Weksler, J.: “So there’s been no opposition here in terms of explaining why the failure
8 to respond to these requests was substantially justified or what other circumstances make the award
9 of expenses unjust, which is what the rule requires.”).) Only now – after the issue has been fully
10 briefed and argued at the Motion to Compel Hearing – do Defendants belatedly contend that
11 Plaintiff’s request should be denied solely because Plaintiff did not submit a specific dollar amount
12 incurred in connection with his Motions to Compel. The Court should reject the Takeover
13 Defendants’ argument.

14 Nevertheless, out of an abundance of caution, and to facilitate prompt resolution of this issue,
15 Plaintiff represents that he has incurred \$34,431.80 in attorney’s fees and related expenses in
16 connection with the Motions to Compel, which includes review of late-produced documents to
17 identify remaining deficiencies, drafting of the Motions, conferencing with opposing counsel, and
18 attending the Motion to Compel Hearing, and \$2,123.85 in fees and costs for taking Zarro’s
19 deposition a third time. Should the Court wish to review the underlying invoices and time entries
20 supporting that figure, Plaintiff is prepared to submit those materials to the Court for in camera or
21 other appropriate review, if requested.

22 In conclusion, Plaintiff respectfully renews his request that the Court award him his
23 attorneys’ fees and costs incurred in bringing his original Motion to Compel, his Renewed Motion
24 to Compel, and for taking Zarro’s deposition a third time.

1 DATED this 5th day of August, 2025.

2 **HUSCH BLACKWELL LLP**

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4 /s/ Patrick M. Harvey
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CERTIFICATE OF SERVICE

1. On August 5, 2025, I served the following document(s): **PLAINTIFF'S REPLY BRIEF IN SUPPORT OF HIS SUPPLEMENTAL REQUEST FOR ATTORNEYS' FEES RELATED TO PLAINTIFF'S MOTION TO COMPEL**

2. I served the above document(s) by the following means to the persons as listed below:

☒ a. ECF System:

☐ b. United States mail, postage fully prepaid:

☐ c. Personal Service:

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ d. By direct email (as opposed to through the ECF System): Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ e. By fax transmission:

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ f. By messenger:

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 5, 2025.

By: /s/ Patrick M. Harvey